

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>11/21/11</u>

At the United States District Court for the Southern District of New York, held in New York County, located at 500 Pearl Street, New York, New York on the 21st day of November, 2011.

P R E S E N T: Hon. Judge Maas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case No.: 10 Cv. 7306 (PAC)

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JENINE CLARK as the Administrator of the Estate :
Of MICHAEL FOX a/k/a BRANDON JACKSON, :
and JENINE CLARK as Mother and Natural :
Guardian of BRANINE JACKSON and BRIANNA :
JACKSON, the Infant Children of BRANDON :
JACKSON, :

Plaintiffs, :

-against- :

COMPROMISE ORDER

COMMISSIONER BRIAN FISCHER, New York :
Department of Correctional Services; :
SUPERINTENDENT PATTY NELSON; :
SUPERINTENDENT RONALD MOSCICKI; :
DR. LESTER WRIGHT, M.D.; JOHN MCPHILIPS, :
M.D.; CORRECTIONS OFFICER DANIEL :
BUNNEY; CORRECTIONS OFFICER JAMES :
BLYTH; CORRECTIONS OFFICER PAUL PAPE; :
CORRECTIONS OFFICER ROBERT CADE; :
CORRECTIONS OFFICER SERGEANT DAVID :
MILLER; CORRECTIONS OFFICER BRIAN :
KEENAN; CORRECTIONS OFFICER "PIERCE", :
employed at Summit Correctional Facility; :
PATRICIA A. FEDERICO; JAMES W. MISKINIS; :
CATHY JO SHUMAN; SLAVA MILOV; :
"DR. MAKRAM", M.D., employed at Ulster :
Correctional Facility; "J. COLVIN" REGISTERED :
NURSE employed at Lakeview Correctional :
Facility; "L. WILCOX", NURSE PRACTITIONER :
employed at Lakeview Correctional Facility; :
"S. MOONEY", CORRECTIONS COUNSELOR :
employed at Summit Correctional Facility; :
CORRECTIONS COUNSELOR MICHAEL :
ILLELLA; CORRECTIONS COUNSELOR :

ANGEL L. JUSTINIANO; JOHN DOE 1, M.D., :
 employed at Lakeview Correctional Facility; :
 JOHN DOE 2, M.D. employed at Lakeview :
 Correctional Facility; :
 :
 All In Their Individual Capacities, :
 Defendants. :
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An action having been commenced for the causes of action for wrongful death and conscious pain and suffering by JENINE CLARK, as Administrator with Limited Letters of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased, against defendants BRIAN FISCHER, PATTY NELSON, RONALD MOSCICKI, DR. LESTER WRIGHT, DR. JOHN MCPHILIPS, DANIEL BUNNEY, JAMES BLYTH, PAUL PAPE, ROBERT CADE, DAVID MILLER, BRIAN KEENAN, KEITH PIERCE, PATRICIA A. FEDERICO, JAMES W. MISKINIS, CATHY JO SHUMAN, SLAVA MILOV, CHERIF MAKRAM, JEANETTE COLVIN, LAWRENCE WILCOX, SANDRA MOONEY, MICHAEL ILLELLA, MICHAEL MCMANN, and ANGEL L. JUSTINIANO, and the parties having agreed that the causes of action of JENINE CLARK, as Administrator with Limited Letters of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased, against LESTER WRIGHT, JAMES MISKINIS, CATHY JO SHUMAN, PATRICIA FEDERICO, JOHN MCPHILLIPS, CHERIF MAKRAM, YAROSLAVA MILOV, LAWRENCE WILCOX and JEANETTE COLVIN are voluntarily dismissed with prejudice and without costs pursuant to Fed. R. Civ. P. 41(a), and that the causes of action against BRIAN FISCHER, PATTY NELSON, RONALD MOSCICKI, DANIEL BUNNEY, JAMES BLYTHE, PAUL PAPE, ROBERT CADE, DAVID MILLER, BRIAN KEENAN, DAVID PLEW, KEITH PIERCE, CORRECTIONS COUNSELOR "S. MOONEY", MICHAEL ILLELLA, MICHAEL MCMANN and ANGEL JUSTINIANO are to be settled for future periodic payments and up-front cash at a total cost to said defendants in the sum of ONE

MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00), to be paid by The State of New York on behalf of said defendants;

And upon the affirmation of Eric Buckvar, Esq., affirmed to the 17th day of ~~August~~ ^{November} 2011;

And upon the affidavit of JENINE CLARK, Administrator with Letters of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased;

And more than seven (7) months having elapsed since the granting of Letters of Administration to JENINE CLARK;

NOW, on Motion of Eric Buckvar, Esq., associated with Morton Buckvar, Esq., attorney for JENINE CLARK, Administrator of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased; it is

ORDERED, that the causes of action brought by JENINE CLARK, as Administrator of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased against defendants LESTER WRIGHT, JAMES MISKINIS, CATHY JO SHUMAN, PATRICIA FEDERICO, JOHN MCPHILLIPS, CHERIF MAKRAM, YAROSLAVA MILOV, LAWRENCE WILCOX and JEANETTE COLVIN are hereby dismissed with prejudice, and it is further

ORDERED, that the causes of action brought by JENINE CLARK, as Administrator of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased against defendants BRIAN FISCHER, PATTY NELSON, RONALD MOSCICKI, DANIEL BUNNEY, JAMES BLYTHE, PAUL PAPE, ROBERT CADE, DAVID MILLER, BRIAN KEENAN, DAVID PLEW, KEITH PIERCE, SANDRA MOONEY, MICHAEL ILLELLA, MICHAEL MCMANN and ANGEL JUSTINIANO are hereby settled for up-front cash and future periodic payments at

a total cost to Defendants in the sum of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00), and it is further

ORDERED, that the settlement provided herein is deemed adequate and in the best interest of the Estate and infant distributees, and it is further

ORDERED, that JENINE CLARK, as Administrator of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased, be and is hereby authorized and empowered to settle the said causes of action of The Estate of BRANDON JACKSON a/k/a MICHAEL FOX against defendants BRIAN FISCHER, PATTY NELSON, RONALD MOSCICKI, DANIEL BUNNEY, JAMES BLYTHE, PAUL PAPE, ROBERT CADE, DAVID MILLER, BRIAN KEENAN, DAVID PLEW, KEITH PIERCE, SANDRA MOONEY, MICHAEL ILLELLA, MICHAEL MCMANN and ANGEL JUSTINIANO, and it is further

ORDERED, that the said Administrator is authorized to discontinue the claims and causes of action for wrongful death and conscious pain and suffering against the defendants; and it is further

ORDERED, that JENINE CLARK, as Administrator of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased, is authorized to execute any General Releases, Settlement Agreements and Releases or other papers required to effectuate the settlement of the said action, and it is further

ORDERED, that the entire settlement sum of \$1,200,000.00 is allocated to the cause of action for wrongful death and the cause of action for conscious pain and suffering against all defendants is discontinued with prejudice and without interest, costs or disbursements, and it is further

ORDERED, that the restrictions contained on the Letters of Administration heretofore issued are hereby modified to the extent necessary to permit the acts herein directed, and the filing of a bond or other security therefore is hereby dispensed with; and it is further

ORDERED, that the State of New York on behalf of the defendants, shall, pursuant to CPLR §5003-a (b), pay within ninety (90) days of receipt of a copy of this Order, and the General Release and/or the Settlement Agreement and Release and Stipulation of Discontinuance, the sum of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00), as follows:

Settlement Sum:	\$1,200,000.00
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To Morton Buckvar, Esq. for fee and disbursements	\$ 405,143.13
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To Wayne Jackson for reimbursement of funeral expenses	\$ 5,569.00
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To Jenine Clark for Administrator's fee	\$ 3,000.00
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To: Symetra Assigned Benefits Service Company the sum of for the purchase of an annuity to provide for future periodic payments for the benefit of BRIANNA JACKSON, individually, as follows:	\$ 419,720.46
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Beginning 8/1/2020, \$22,000.00 payable annually, guaranteed for 4 years, with the last guaranteed payment on 8/1/2023;

Beginning 8/1/2020, \$1,100.00 payable monthly, guaranteed for 3 years and 10 months, with the last guaranteed payment on 5/1/2024;

Beginning 1/1/2021, \$22,000.00 annually, guaranteed for 4 years, with the last guaranteed payment on 1/1/2024;

A guaranteed lump sum payment of \$55,000.00 on 6/22/2024;

Beginning 7/22/2024, \$1,368.94 payable monthly, guaranteed for 12 years and 10 months, with the last guaranteed payment on 4/22/2037;

A guaranteed lump sum payment of \$410,917.69 on 5/22/2037.

To: Symetra Assigned Benefits Service Company
the sum of \$ 366,567.41
for the purchase of an annuity to provide
for future periodic payments for the
benefit of BRANINE JACKSON, individually,
as follows:

A guaranteed lump sum payment of \$20,000.00 on 8/23/2018;

Beginning 8/23/2018, \$1,000.00 payable monthly, guaranteed for 3 years and 10 months, with the last guaranteed payment on 5/23/2022;

Beginning 1/1/2019, \$20,000.00 payable annually, guaranteed for 4 years, with the last guaranteed payment on 1/1/2022;

Beginning 8/1/2019, \$20,000.00 annually, guaranteed for 3 years, with the last guaranteed payment on 8/1/2021;

A guaranteed lump sum payment of \$50,000.00 on 6/23/2022;

Beginning 7/23/2022, \$1,217.37 payable monthly, guaranteed for 13 years and 1 month, with the last guaranteed payment on 7/23/2035;

A guaranteed lump sum payment of \$217,894.27 on 8/23/2035.

That the above aforementioned payments stated as guaranteed shall be paid whether or not BRANINE JACKSON and BRIANNA JACKSON are alive. In the event that BRANINE JACKSON or BRIANNA JACKSON dies at any time prior to the receipt of all payments described as guaranteed, the balance of any guaranteed payments shall be paid to their respective Estates or to any such person they may so designate on attaining age of majority, and it is further

ORDERED, that the projected purchase date of the annuity policies is February 23, 2012. Any delay in funding the annuity policies may result in a delay of the payment dates and/or change in the benefit payment amounts which shall be recorded in the settlement

agreement, qualified assignment document and annuity contracts without the necessity of obtaining further court approval, and it is further

ORDERED, that all sums set forth herein constitute damages on account of physical injuries or physical sickness, including wrongful death, within the meaning of § 104 (a)(2) and § 130 (c) [as regards the future periodic payments] of the Internal Revenue Code of 1986, as amended, and it is further

ORDERED, that in the event payment of the amounts recited above are not made within ninety (90) days after the receipt by defendants' counsel of a copy of this order, interest shall accrue on the outstanding principal balance at the rate provided in 28 U.S.C. § 1961, and it is further

ORDERED, that in consideration of the payment of the sums recited above, plaintiff, Jenine Clark, Administrator of the Estate of Brandon Jackson a/k/a Michael Fox, hereby releases and discharges the defendants, the State of New York, and any and all current or former employees or agents of the State of New York or the New York State Department of Corrections and Community Supervision, formerly known as the New York State Department of Correctional Services, in their individual and official capacities, and their heirs, executors, administrators and assigns, and the State of New York and its agencies, including, without limitation, the New York State Department of Corrections and Community Supervision, from any and all claims, liabilities and causes of action which plaintiff or plaintiff's representatives, heirs or assigns ever had, now have or hereafter shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date that the Stipulation of Settlement is executed by plaintiff's counsel, and it is further

ORDERED, that attorneys fees to Morton Buckvar, Esq., attorney for the plaintiff in said action, are approved in the sum of \$397,428.43 and his disbursements of \$7,714.70 for services rendered and expenses incurred, pursuant to the retainer executed by the plaintiff, and it is further,

ORDERED, that the future periodic payment obligations of the State of New York may be met by assigning to and arranging for an assumption by Symetra Assigned Benefits Service Company of the defendants' obligation to make the future periodic payments set forth herein, pursuant to Internal Revenue Code § 130(c), and that Symetra Assigned Benefits Service Company may fund the obligation assumed by the purchase of annuities from First Symetra National Life Insurance Company of New York, an A.M. Best Company rated A insurer licensed to do business in the State of New York. BRANINE JACKSON and BRIANNA JACKSON shall each have a security interest in the respective annuities used to fund their future periodic payments. First Symetra National Life Insurance Company of New York shall guarantee the performance of Symetra Assigned Benefits Service Company, and it is further

ORDERED, that Symetra Assigned Benefits Service Company may fund its obligation to make the periodic payments by purchasing an annuity policy from First Symetra National Life Insurance Company of New York which shall be owned by Symetra Assigned Benefits Service Company pursuant to Internal Revenue Code § 130(d), and it is further

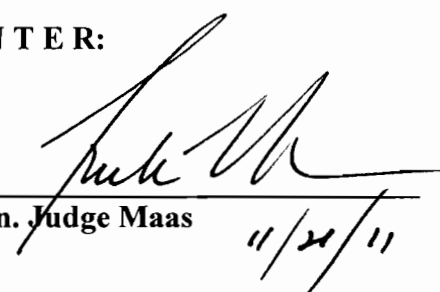
ORDERED, that the State of New York shall fund the periodic payment obligations by issuing a check or draft made payable to Symetra Assigned Benefits Service Company in the sum of \$786,287.87 and delivering said check or draft to Creative Capital Inc., the structured settlement broker placing the case, and it is further

ORDERED, that no part of the sum being paid by the State of New York to provide future periodic payments as set forth in this order may be paid directly to Plaintiffs or distributees, this Court having determined that a structured settlement is in the best interest of the distributees and that said periodic payments constitute damages on account of physical injury or physical sickness in a case involving physical injury or physical sickness, including wrongful death, within the meaning of § 104(a)(2) and § 130(c) of the Internal Revenue Code of 1986, as amended, and it is further

ORDERED, that upon making and receipt of all of the payments above directed in compliance with this order, as well as the assignments to Symetra Assigned Benefits Service Company, as set forth above, the defendants BRIAN FISCHER, PATTY NELSON, RONALD MOSCICKI, DANIEL BUNNEY, JAMES BLYTHE, PAUL PAPE, ROBERT CADE, DAVID MILLER, BRIAN KEENAN, DAVID PLEW, KEITH PIERCE, SANDRA MOONEY, MICHAEL ILLELLA, MICHAEL MCMANN and ANGEL JUSTINIANO shall then be discharged from any and all responsibility as to the causes of action set forth in this action, and it is further

ORDERED, that upon complying with the terms of this Decree, JENINE CLARK, as Administrator of the Estate of BRANDON JACKSON a/k/a MICHAEL FOX, deceased and the aforesaid defendants are hereby released and discharged of any further liability as to all matters embraced in said account and this Order.

ENTER:



Hon. Judge Maas

11/21/11